

ASSEMBLY BILL

No. 1183

Introduced by Assembly Member Vargas

February 22, 2005

An act to amend Sections 1872, 1872.1, 1872.3, 1872.4, 1872.7, 1872.8, 1872.81, 1872.83, 1872.85, 1872.9, 1872.95, 1872.96, 1873.4, 1874.8, 1875.20, 1877.3, 1879.4, and 12964 of, and to repeal Sections 1871.4, 11760, and 11880 of, the Insurance Code, and to amend Section 138.7 of the Labor Code, and to add Sections 550.1, 550.2, 550.3, and 633.3 to, the Penal Code, relating to insurance fraud.

LEGISLATIVE COUNSEL'S DIGEST

AB 1183, as introduced, Vargas. Insurance fraud.

Under existing law, fraudulent activities connected to workers' compensation are crimes. Those provisions are contained in the Insurance Code.

This bill would move those provisions to the Penal Code.

Under existing law, there is within the Department of Insurance a division empowered to enforce laws and regulations related to workers compensation fraud. The name of that division has changed from the Bureau of Fraudulent Claims to the Fraud Division.

This bill would make the relevant changes to update the name of the division in statute.

Existing law requires each insurer doing business in the state to pay an annual fee, in addition to other fees, of 30¢ for each vehicle it insures to fund certain consumer operations of the Department of Insurance related to automobile insurance, and an annual fee of 50¢ for each vehicle it insures, to fund the Fraud Division and an Organized Automobile Fraud Activity Interdiction Program. The

provisions authorizing both of those fees are repealed as of January 1, 2007.

This bill would repeal those repeal dates, thereby extending those fees indefinitely.

Under existing law, except as expressly permitted, a person or entity not a party to a claim for workers' compensation benefits may not obtain individually identifiable information, as defined.

This bill would expressly permit the Fraud Division to use individually identifiable information for purposes of carrying out its duties.

Existing law prohibits any person from wiretapping, eavesdropping, intercepting, or recording confidential communications, without the consent of all parties to the communication.

This bill would authorize a peace officer who is an investigator within the Fraud Division of the Department of Insurance, when acting within the course and scope of his or her employment and when conducting a criminal investigation, to listen to, monitor, or record any communication otherwise prohibited from being listened to, monitored, or recorded, but only after the Department of Insurance establishes a policy related thereto, and submits that policy to the Attorney General. The bill would state that any evidence obtained pursuant to that authorization is admissible.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1871.4 of the Insurance Code, as
- 2 amended by Section 1 of Chapter 2 of the 4th Extraordinary
- 3 Session of the Statutes of 2004, is repealed.
- 4 ~~1871.4. (a) It is unlawful to do any of the following:~~
- 5 ~~(1) Make or cause to be made a knowingly false or fraudulent~~
- 6 ~~material statement or material representation for the purpose of~~
- 7 ~~obtaining or denying any compensation, as defined in Section~~
- 8 ~~3207 of the Labor Code.~~
- 9 ~~(2) Present or cause to be presented a knowingly false or~~
- 10 ~~fraudulent written or oral material statement in support of, or in~~
- 11 ~~opposition to, a claim for compensation for the purpose of~~
- 12 ~~obtaining or denying any compensation, as defined in Section~~
- 13 ~~3207 of the Labor Code.~~

1 ~~(3) Knowingly assist, abet, conspire with, or solicit a person in~~
2 ~~an unlawful act under this section.~~

3 ~~(4) Make or cause to be made a knowingly false or fraudulent~~
4 ~~statement with regard to entitlement to benefits with the intent to~~
5 ~~discourage an injured worker from claiming benefits or pursuing~~
6 ~~a claim.~~

7 ~~For the purposes of this subdivision, “statement” includes, but~~
8 ~~is not limited to, a notice, proof of injury, bill for services,~~
9 ~~payment for services, hospital or doctor records, X-ray, test~~
10 ~~results, medical-legal expense as defined in Section 4620 of the~~
11 ~~Labor Code, other evidence of loss, injury, or expense, or~~
12 ~~payment.~~

13 ~~(5) Make or cause to be made a knowingly false or fraudulent~~
14 ~~material statement or material representation for the purpose of~~
15 ~~obtaining or denying any of the benefits or reimbursement~~
16 ~~provided in the Return-to-Work Program established under~~
17 ~~Section 139.48 of the Labor Code.~~

18 ~~(6) Make or cause to be made a knowingly false or fraudulent~~
19 ~~material statement or material representation for the purpose of~~
20 ~~discouraging an employer from claiming any of the benefits or~~
21 ~~reimbursement provided in the Return-to-Work Program~~
22 ~~established under Section 139.48 of the Labor Code.~~

23 ~~(b) Every person who violates subdivision (a) shall be~~
24 ~~punished by imprisonment in the county jail for one year, or in~~
25 ~~the state prison, for two, three, or five years, or by a fine not~~
26 ~~exceeding one hundred fifty thousand dollars (\$150,000) or~~
27 ~~double the value of the fraud, whichever is greater, or by both~~
28 ~~that imprisonment and fine. Restitution shall be ordered,~~
29 ~~including restitution for any medical evaluation or treatment~~
30 ~~services obtained or provided. The court shall determine the~~
31 ~~amount of restitution and the person or persons to whom the~~
32 ~~restitution shall be paid. A person convicted under this section~~
33 ~~may be charged the costs of investigation at the discretion of the~~
34 ~~court.~~

35 ~~(c) A person who violates subdivision (a) and who has a prior~~
36 ~~felony conviction of that subdivision, of former Section 556, of~~
37 ~~former Section 1871.1, or of Section 548 or 550 of the Penal~~
38 ~~Code, shall receive a two-year enhancement for each prior~~
39 ~~conviction in addition to the sentence provided in subdivision~~
40 ~~(b).~~

1 ~~The existence of any fact that would subject a person to a~~
2 ~~penalty enhancement shall be alleged in the information or~~
3 ~~indictment and either admitted by the defendant in open court, or~~
4 ~~found to be true by the jury trying the issue of guilt or by the~~
5 ~~court where guilt is established by plea of guilty or nolo~~
6 ~~contendere or by trial by the court sitting without a jury.~~

7 ~~(d) This section may not be construed to preclude the~~
8 ~~applicability of any other provision of criminal law that applies~~
9 ~~or may apply to a transaction.~~

10 SEC. 2. Section 1872 of the Insurance Code is amended to
11 read:

12 1872. There is created within the department ~~a Bureau of~~
13 ~~Fraudulent Claims~~ *the Fraud Division* to enforce the provisions
14 ~~of Section 1871.4 of this code, and Sections 549 and, 550, and~~
15 *550.1* of the Penal Code, and to administer the provisions of
16 Article 3 (commencing with Section 1873).

17 SEC. 3. Section 1872.1 of the Insurance Code is amended to
18 read:

19 1872.1. (a) There is created within the ~~Bureau of Fraudulent~~
20 ~~Claims~~ *Fraud Division* an advisory committee on automobile
21 insurance fraud and economic automobile theft prevention,
22 investigation, and prosecution, as provided in this chapter. The
23 committee shall be composed of the Chief of the ~~Bureau of~~
24 ~~Fraudulent Claims~~ *Fraud Division*, a representative from the
25 Department of Justice, the Department of Motor Vehicles, the
26 Division of Investigation of the Department of Consumer Affairs,
27 the Department of the California Highway Patrol, the Bureau of
28 Automotive Repair, the Parole and Community Services Division
29 of the Department of Corrections, the State Bar of California, the
30 Medical Board of California, the State Board of Chiropractic
31 Examiners, two representatives from local law enforcement
32 agencies, one of whom shall be a prosecutor, and representatives
33 of three insurers assessed pursuant to Section 1872.8, and a
34 representative of a labor organization with members in the
35 automotive repair business.

36 (b) The commissioner shall select representatives from local
37 law enforcement agencies from names submitted from local law
38 enforcement agencies. The commissioner shall select one insurer
39 representative from each of the following three categories from
40 nominees submitted by insurers in each category: one

1 representative of insurers with average annual automobile
2 liability premiums in California of less than one hundred million
3 dollars (\$100,000,000) in the preceding three years; one
4 representative of insurers with average annual automobile
5 liability premiums in California between one hundred million
6 dollars (\$100,000,000) and seven hundred million dollars
7 (\$700,000,000) in the preceding three years; and one
8 representative of insurers with average annual automobile
9 liability premiums in California exceeding seven hundred million
10 dollars (\$700,000,000) in the preceding three years. At least one
11 insurer representative shall be employed by an insurer having its
12 principal headquarters in California. Members appointed by the
13 commissioner shall serve at the pleasure of the commissioner.
14 Representatives from other agencies shall be selected by the
15 agencies represented.

16 (c) The advisory committee shall elect one of its members
17 annually to chair its meetings. The chair shall conduct quarterly
18 meetings of the committee in California and at such other times
19 as he or she deems appropriate. Members of the committee shall
20 serve without compensation except for expenses incidental to
21 attendance at meetings called by the chair. A report of the
22 committee's activities shall be included in the report required
23 under Section 1872.9.

24 (d) The purpose and goals of the advisory committee are as
25 follows:

26 (1) Recommend to the ~~Bureau of Fraudulent Claims~~ *Fraud*
27 *Division* and other appropriate public agencies and private sector
28 entities ways to coordinate the investigation, prosecution, and
29 prevention of automobile insurance claims fraud, including
30 economic automobile theft.

31 (2) Provide assistance to the ~~bureau~~ *Fraud Division* towards
32 implementing the goal of reducing the frequency and severity of
33 fraudulent automobile insurance claims (adjusted for population
34 growth and inflation) of 20 percent in urban areas and 10 percent
35 in rural areas of the state within a 24-month period from the
36 effective date of this chapter by utilizing resources set forth in
37 Section 1872.8.

38 (3) Assure that preventive, investigative, prosecutive, and data
39 collection efforts undertaken by the ~~bureau~~ *Fraud Division*
40 pursuant to this chapter are efficient, cost-effective, and

1 complement similar efforts undertaken by law enforcement
2 agencies and insurers.

3 (4) Make recommendations for inclusion in the ~~bureau's~~
4 *Fraud Division's* annual report required by Section 1872.9.

5 SEC. 4. Section 1872.3 of the Insurance Code is amended to
6 read:

7 1872.3. (a) If, by its own inquiries or as a result of
8 complaints, the ~~Bureau of Fraudulent Claims~~ *Fraud Division* has
9 reason to believe that a person has engaged in, or is engaging in,
10 an act or practice that violates ~~Section 1871.4 of this code, or~~
11 ~~Section 549 or, 550, or 550.1 of the Penal Code, the~~
12 commissioner in his or her discretion *may do either or both of the*
13 *following*:

14 (1) ~~may make~~ *Make* those public or private investigations
15 within or outside of this state that he or she deems necessary to
16 determine whether any person has violated or is about to violate
17 any provision of ~~Section 1871.4 of this code, or Section 549 or,~~
18 ~~550, or 550.1 of the Penal Code, or to aid in the enforcement of~~
19 ~~this chapter, and.~~

20 (2) ~~may publish~~ *Publish* information concerning any violation
21 of this chapter or Section 550 or 550.1 of the Penal Code.

22 (b) For purposes of any investigation under this section, the
23 commissioner or any officer designated by the commissioner
24 may administer oaths and affirmations, subpoena witnesses,
25 compel their attendance, take evidence, and require the
26 production of any books, papers, correspondence, memoranda,
27 agreements, or other documents or records that the commissioner
28 deems relevant or material to the inquiry, as provided by Section
29 12924.

30 (c) If any matter that the commissioner seeks to obtain by
31 request is located outside the state, the person so requested may
32 make it available to the commissioner or his or her representative
33 to be examined at the place where it is located. The
34 commissioner may designate representatives, including officials
35 of the state in which the matter is located, to inspect the matter
36 on his or her behalf, and he or she may respond to similar
37 requests from officials of other states.

38 (d) Except as provided in subdivision (e), the department's
39 papers, documents, reports, or evidence relative to the subject of
40 an investigation under this section shall not be subject to public

1 inspection for so long a period as the commissioner deems
2 reasonably necessary to complete the investigation, to protect the
3 person investigated from unwarranted injury, or to serve the
4 public interest. Furthermore, those papers, documents, reports, or
5 evidence shall not be subject to subpoena or subpoena duces
6 tecum until opened for public inspection by the commissioner,
7 unless the commissioner otherwise consents or, after notice to the
8 commissioner and a hearing, the superior court determines that
9 the public interest and any ongoing investigation by the
10 commissioner would not be unnecessarily jeopardized by
11 compliance with the subpoena duces tecum.

12 (e) The ~~Bureau of Fraudulent Claims~~ *Fraud Division* shall
13 furnish all papers, documents, reports, complaints, or other facts
14 or evidence to any police, sheriff, or other law enforcement
15 agency, when so requested, and shall assist and cooperate with
16 those law enforcement agencies.

17 SEC. 5. Section 1872.4 of the Insurance Code is amended to
18 read:

19 1872.4. (a) Any company licensed to write insurance in this
20 state that ~~believes~~ *reasonably believes or knows* that a fraudulent
21 claim is being made shall, within 60 days after determination by
22 the insurer that the claim appears to be a fraudulent claim, send
23 to the ~~Bureau of Fraudulent Claims~~ *Fraud Division*, on a form
24 prescribed by the department, the information requested by the
25 form and any additional information relative to the factual
26 circumstances of the claim and the parties claiming loss or
27 damages that the commissioner may require. The ~~Bureau of~~
28 ~~Fraudulent Claims~~ *Fraud Division* shall review each report and
29 undertake further investigation it deems necessary and proper to
30 determine the validity of the allegations. Whenever the
31 commissioner is satisfied that fraud, deceit, or intentional
32 misrepresentation of any kind has been committed in the
33 submission of the claim, he or she shall report the violations of
34 law to the insurer, to the appropriate licensing agency, and to the
35 district attorney of the county in which the offenses were
36 committed, as provided by Sections 12928 and 12930. If the
37 commissioner is satisfied that fraud, deceit, or intentional
38 misrepresentation has not been committed, he or she shall report
39 that determination to the insurer. If prosecution by the district
40 attorney concerned is not begun within 60 days of the receipt of

1 the commissioner's report, the district attorney shall inform the
2 commissioner and the insurer as to the reasons for the lack of
3 prosecution regarding the reported violations.

4 (b) This section shall not require an insurer to submit to the
5 ~~bureau~~ *Fraud Division* the information specified in subdivision
6 (a) in either of the following instances:

7 (1) The insurer's initial investigation indicated a potentially
8 fraudulent claim but further investigation revealed that it was not
9 fraudulent.

10 (2) The insurer and the claimant have reached agreement as to
11 the amount of the claim and the insurer does not have reasonable
12 grounds to believe that claim to be fraudulent.

13 (c) Nothing contained in this article shall relieve an insurer of
14 its existing obligations to also report suspected violations of law
15 to appropriate local law enforcement agencies.

16 (d) Any police, sheriff, disciplinary body governed by the
17 provisions of the Business and Professions Code, or other law
18 enforcement agency shall furnish all papers, documents, reports,
19 complaints, or other facts or evidence to the ~~Bureau of~~
20 ~~Fraudulent Claims~~ *Fraud Division*, when so requested, and shall
21 otherwise assist and cooperate with the ~~bureau~~ *division*.

22 (e) If an insurer, at the time the insurer, pursuant to
23 subdivision (a) forwards to the ~~Bureau of Fraudulent Claims~~
24 *Fraud Division* information on a claim that appears to be
25 fraudulent, has no evidence to believe the insured on that claim is
26 involved with the fraud or the fraudulent collision, the insurer
27 shall take all necessary steps to assure that no surcharge is added
28 to the insured's premium because of the claim.

29 SEC. 6. Section 1872.7 of the Insurance Code is amended to
30 read:

31 1872.7. The costs of administration and operation of the
32 ~~Bureau of Fraudulent Claims~~ *Fraud Division* shall be borne by
33 all of the insurers admitted to transact insurance in this state. The
34 commissioner shall divide those costs among all of those
35 insurers, assessing each company an identical amount adequate
36 to provide the funds for each fiscal year of operation of the
37 ~~bureau~~ *division*. However, the assessment for each company shall
38 not exceed one thousand three hundred dollars (\$1,300) in each
39 fiscal year. All moneys received by the commissioner from
40 insurers pursuant to this section shall be transmitted to the

Treasurer to be deposited in the State Treasury to the credit of the Insurance Fund. All moneys that are deposited in the fund after receipt by the commissioner from insurers pursuant to this section are to be exclusively used for the support of the ~~Bureau of Fraudulent Claims~~ *LEAD AUTHOR*. To the extent the assessments against insurers made pursuant to this section are not sufficient to fund the entire operations of the ~~bureau~~ *division*, other moneys appropriated to the department, if available, may be used, at the commissioner's discretion, to fund those operations not covered by the assessments. The total budget of the ~~bureau~~ *Fraud Division* shall be as determined annually in the Budget Act.

SEC. 7. Section 1872.8 of the Insurance Code is amended to read:

1872.8. (a) Each insurer doing business in this state shall pay an annual fee to be determined by the commissioner, but not to exceed one dollar (\$1) annually for each vehicle insured under an insurance policy it issues in this state, in order to fund increased investigation and prosecution of fraudulent automobile insurance claims and economic automobile theft. Thirty-four percent of those funds received from ninety-five cents (\$0.95) of the assessment fee per insured vehicle shall be distributed to the ~~Bureau of Fraudulent Claims~~ *Fraud Division* for enhanced investigative efforts, 15 percent of that ninety-five cents (\$0.95) shall be deposited in the Motor Vehicle Account for appropriation to the Department of the California Highway Patrol for enhanced prevention and investigative efforts to deter economic automobile theft, and 51 percent of the funds shall be distributed to district attorneys for purposes of investigation and prosecution of automobile insurance fraud cases, including fraud involving economic automobile theft.

(b) (1) The commissioner shall award funds to district attorneys according to population. The commissioner may alter this distribution formula as necessary to achieve the most effective distribution of funds. Each local district attorney desiring a portion of those funds shall submit to the commissioner an application detailing the proposed use of any moneys that may be provided. The application shall include a detailed accounting of assessment funds received and expended in prior years, including at a minimum, *all of the following*:

1 (A) ~~the~~ *The* amount of funds received and expended;

2 (B) ~~the~~ *The* uses to which those funds were put, including
3 payment of salaries and expenses, purchase of equipment and
4 supplies, and other expenditures by type;

5 (C) ~~results~~ *Results* achieved as a consequence of expenditures
6 made, including the number of investigations, arrests, complaints
7 filed, convictions, and the amounts originally claimed in cases
8 prosecuted compared to payments actually made in those cases;
9 and.

10 (D) ~~other~~ *Other* relevant information as the commissioner may
11 reasonably require.

12 Any district attorney who fails to submit an application within
13 90 days of the commissioner's deadline for applications shall be
14 subject to loss of distribution of the money. The commissioner
15 may consider recommendations and advice of the ~~bureau~~ *Fraud*
16 *Division* and the Commissioner of the California Highway Patrol
17 in allocating moneys to local district attorneys. Any district
18 attorney that receives funds shall submit an annual report to the
19 commissioner, which may be made public, as to the success of
20 the program administered. The report shall provide information
21 and statistics on the number of active investigations, arrests,
22 indictments, and convictions. Both the application for moneys
23 and the distribution of moneys shall be public documents. The
24 commissioner shall conduct a fiscal audit of the programs
25 administered under this subdivision at least once every three
26 years. The cost of a fiscal audit shall be shared equally between
27 the department and the district attorney. Information submitted to
28 the commissioner pursuant to this section concerning criminal
29 investigations, whether active or inactive, shall be confidential. If
30 the commissioner determines that a district attorney is unable or
31 unwilling to investigate and prosecute automobile insurance
32 fraud claims as provided by this subdivision or Section 1874.8,
33 the commissioner may discontinue the distribution of funds
34 allocated for that county and may redistribute those funds to
35 other eligible district attorneys.

36 (2) The Department of the California Highway Patrol shall
37 submit to the commissioner, for informational purposes only, a
38 report detailing the department's proposed use of funds under
39 this section and an annual report in the same format as required
40 of district attorneys under paragraph (1).

1 (c) The remaining five cents (\$0.05) shall be spent for
2 enhanced automobile insurance fraud investigation by the ~~bureau~~
3 *Fraud Division*.

4 (d) Except for funds to be deposited in the Motor Vehicle
5 Account for allocation to the Department of the California
6 Highway Patrol for purposes of the Motor Vehicle Prevention
7 Act, (Chapter 5 (commencing with Section 10900) of Division 4
8 of the Vehicle Code), the funds received under this section shall
9 be deposited in the Insurance Fund and be expended and
10 distributed when appropriated by the Legislature.

11 (e) In the course of its investigations, the ~~Bureau of Fraudulent~~
12 ~~Claims~~ *Fraud Division* shall aggressively pursue all reported
13 incidents of probable fraud and, in addition, shall forward to the
14 appropriate disciplinary body the names of any individuals
15 licensed under the Business and Professions Code who are
16 suspected of actively engaging in fraudulent activity along with
17 all relevant supporting evidence.

18 (f) As used in this section “economic automobile theft” means
19 automobile theft perpetrated for financial gain, including, but not
20 limited to, the following:

- 21 (1) Theft of a motor vehicle for financial gain.
- 22 (2) Reporting that a motor vehicle has been stolen for the
23 purpose of filing a false insurance claim.
- 24 (3) Engaging in any act prohibited by Chapter 3.5
25 (commencing with Section 10801) of Division 4 of the Vehicle
26 Code.
- 27 (4) Switching of vehicle identification numbers to obtain title
28 to a stolen motor vehicle.

29 SEC. 8. Section 1872.81 of the Insurance Code is amended to
30 read:

31 1872.81. ~~(a)~~ In addition to the fee imposed pursuant to
32 Section 1872.8, each insurer doing business in this state shall pay
33 to the commissioner an annual fee of thirty cents (\$0.30) for each
34 vehicle insured under an insurance policy it issues in this state,
35 for expenditure as follows:

- 36 ~~(1)~~
- 37 (a) An amount equivalent to twenty cents (\$0.20) of the fee
38 imposed per insured vehicle by this section shall be used for the
39 purpose of paying for consumer service functions of the
40 department that are related to automobile insurance. The

1 revenues under this subdivision shall be used to improve service
2 to consumers through the rating and underwriting services
3 bureau, the claims services bureau, the investigations bureau, or
4 any successor bureaus of the department that may assume the
5 consumer service functions of these bureaus. ~~It is the intent of the~~
6 ~~Legislature that the highest priority for use of these revenues~~
7 ~~during the 1999-00 and 2000-01 fiscal years shall be to~~
8 ~~eliminate the backlog of consumer complaints relative to~~
9 ~~automobile insurance policies, insurers selling automobile~~
10 ~~policies, and agents and brokers selling those policies.~~ The
11 department shall develop a plan for the use of the revenues
12 available under this subdivision for the purposes authorized, and
13 shall submit the plan to the Assembly and Senate Committees on
14 Insurance.

15 ~~(2)~~

16 *(b)* An amount equivalent to ten cents (\$0.10) of the fee
17 imposed per insured vehicle by this section shall be used for the
18 purpose of improving consumer functions of the department
19 related to automobile insurance. Revenues available under this
20 subdivision shall be used to improve consumer functions through
21 one or more of the following:

22 ~~(A) the~~

23 *(1)* ~~The~~ rating and underwriting services bureau, ~~(B) the.~~

24 *(2)* ~~The~~ claims services bureau, ~~(C) the.~~

25 *(3)* ~~The~~ investigations bureau, ~~and (D) any.~~

26 *(4)* Any successor bureau of the department that may assume
27 automobile insurance consumer functions of these bureaus.
28 These revenues may also be used for improving the ability of the
29 department to respond to consumer complaints and information
30 requests through the department's toll-free telephone number,
31 and for improving the ability of the department to offer
32 information about automobile insurance rates to the public. The
33 department shall develop a plan for the use of the revenues
34 available under this subdivision for the purpose authorized, and
35 shall submit the plan to the Assembly and Senate Committees on
36 Insurance.

37 ~~(b) This section shall remain in effect only until January 1,~~
38 ~~2007, and as of that date is repealed, unless a later enacted~~
39 ~~statute, that is enacted before January 1, 2007, deletes or extends~~
40 ~~that date.~~

SEC. 9. Section 1872.83 of the Insurance Code is amended to read:

1872.83. (a) The commissioner shall ensure that the ~~Bureau of Fraudulent Claims~~ *Fraud Division* aggressively pursues all reported incidents of probable workers' compensation fraud, as defined in Sections ~~11760 and 11880, in subdivision (a) of Section 1871.4, and in Section 549~~ 549, 550.1, 550.2, and 550.3 of the Penal Code, and forwards to the appropriate disciplinary body the names, along with all supporting evidence, of any individuals licensed under the Business and Professions Code who are suspected of actively engaging in fraudulent activity. The ~~Bureau of Fraudulent Claims~~ *Fraud Division* shall forward to the Insurance Commissioner or the Director of Industrial Relations, as appropriate, the name, along with all supporting evidence, of any insurer, as defined in subdivision (c) of Section 1877.1, suspected of actively engaging in the fraudulent denial of claims.

(b) To fund increased investigation and prosecution of workers' compensation fraud, and of willful failure to secure payment of workers' compensation, in violation of Section 3700.5 of the Labor Code, there shall be an annual assessment as follows:

(1) The aggregate amount of the assessment shall be determined by the Fraud Assessment Commission, which is hereby established. The commission shall be composed of seven members consisting of two representatives of organized labor, two representatives of self-insured employers, one representative of insured employers, one representative of workers' compensation insurers, and the President of the State Compensation Insurance Fund, or his or her designee.

The Governor shall appoint members representing organized labor, self-insured employers, insured employers, and insurers. The term of office of members of the commission shall be four years, and a member shall hold office until the appointment of a successor. The President of the State Compensation Insurance Fund shall be an ex officio, voting member of the commission. Members of the commission shall receive one hundred dollars (\$100) for each day of actual attendance at commission meetings and other official commission business, and shall also receive their actual and necessary traveling expenses incurred in the

1 performance of commission duties. Payment of per diem and
2 travel expenses shall be made from the Workers' Compensation
3 Fraud Account in the Insurance Fund, established in paragraph
4 (4), upon appropriation by the Legislature.

5 (2) In determining the aggregate amount of the assessment, the
6 Fraud Assessment Commission shall consider the advice and
7 recommendations of the ~~Bureau of Fraudulent Claims~~ *Fraud*
8 *Division* and the commissioner.

9 (3) The aggregate amount of the assessment shall be collected
10 by the Director of Industrial Relations pursuant to Section 62.6 of
11 the Labor Code. The Fraud Assessment Commission shall
12 annually advise the Director of Industrial Relations, not later than
13 March 15, of the aggregate amount to be assessed for the next
14 fiscal year.

15 (4) The amount collected, together with the fines collected for
16 violations of the unlawful acts specified in ~~Sections 1871.4,~~
17 ~~11760, and 11880,~~ Section 3700.5 of the Labor Code, and
18 ~~Section~~ *Sections 549, 550.1, 550.2, and 550.3* of the Penal Code,
19 shall be deposited in the Workers' Compensation Fraud Account
20 in the Insurance Fund, which is hereby created, and may be used,
21 upon appropriation by the Legislature, only for enhanced
22 investigation and prosecution of workers' compensation fraud
23 and of willful failure to secure payment of workers'
24 compensation as provided in this section.

25 (c) For each fiscal year, the total amount of revenues derived
26 from the assessment pursuant to subdivision (b) shall, together
27 with amounts collected pursuant to fines imposed for unlawful
28 acts described in ~~Sections 1871.4, 11760, and 11880,~~ Section
29 3700.5 of the Labor Code, and ~~Section 549~~ *Sections 549, 550.1,*
30 *550.2, and 550.3* of the Penal Code, not be less than three million
31 dollars (\$3,000,000). Any funds appropriated by the Legislature
32 pursuant to subdivision (b) that are not expended in the fiscal
33 year for which they have been appropriated, and that have not
34 been allocated under subdivision (f), shall be applied to satisfy
35 for the immediately following fiscal year the minimum total
36 amount required by this subdivision. In no case may that money
37 be transferred to the General Fund.

38 (d) After incidental expenses, at least 40 percent of the funds
39 to be used for the purposes of this section shall be provided to the
40 ~~Bureau of Fraudulent Claims~~ *Fraud Division* of the Department

1 of Insurance for enhanced investigative efforts, and at least 40
 2 percent of the funds shall be distributed to district attorneys,
 3 pursuant to a determination by the commissioner with the advice
 4 and consent of the ~~bureau~~ *division* and the Fraud Assessment
 5 Commission, as to the most effective distribution of moneys for
 6 purposes of the investigation and prosecution of workers'
 7 compensation fraud cases and cases relating to the willful failure
 8 to secure the payment of workers' compensation. Each district
 9 attorney seeking a portion of the funds shall submit to the
 10 commissioner an application setting forth in detail the proposed
 11 use of any funds provided. A district attorney receiving funds
 12 pursuant to this subdivision shall submit an annual report to the
 13 commissioner with respect to the success of his or her efforts.
 14 Upon receipt, the commissioner shall provide copies to the
 15 ~~bureau~~ *Fraud Division* and the Fraud Assessment Commission of
 16 any application, annual report, or other documents with respect to
 17 the allocation of money pursuant to this subdivision. Both the
 18 application for moneys and the distribution of moneys shall be
 19 public documents. Information submitted to the commissioner
 20 pursuant to this section concerning criminal investigations,
 21 whether active or inactive, shall be confidential.

22 (e) If a district attorney is determined by the commissioner to
 23 be unable or unwilling to investigate and prosecute workers'
 24 compensation fraud claims or claims relating to the willful failure
 25 to secure the payment of workers' compensation, the
 26 commissioner shall discontinue distribution of funds allocated for
 27 that county and may redistribute those funds according to this
 28 subdivision.

29 (1) The commissioner shall promptly determine whether any
 30 other county could assert jurisdiction to prosecute the fraud
 31 claims or claims relating to the willful failure to secure the
 32 payment of workers' compensation that would have been brought
 33 in the nonparticipating county, and if so, the commissioner may
 34 award funds to conduct the prosecutions redirected pursuant to
 35 this subdivision. These funds may be in addition to any other
 36 fraud prosecution funds or claims relating to the willful failure to
 37 secure the payment of workers' compensation prosecution
 38 otherwise awarded under this section. Any district attorney
 39 receiving funds pursuant to this subdivision shall first agree that
 40 the funds shall be used solely for investigating and prosecuting

1 those cases of workers' compensation fraud or claims relating to
2 the willful failure to secure the payment of workers'
3 compensation that are redirected pursuant to this subdivision and
4 submit an annual report to the commissioner with respect to the
5 success of the district attorney's efforts. The commissioner shall
6 keep the Fraud Assessment Commission fully informed of all
7 reallocations of funds under this paragraph.

8 (2) If the commissioner determines that no district attorney is
9 willing or able to investigate and prosecute the workers'
10 compensation fraud claims or claims relating to the willful failure
11 to secure the payment of workers' compensation arising in the
12 nonparticipating county, the commissioner, with the advice and
13 consent of the Fraud Assessment Commission, may award to the
14 Attorney General some or all of the funds previously awarded to
15 the nonparticipating county. Before the commissioner may award
16 any funds, the Attorney General shall submit to the
17 commissioner an application setting forth in detail his or her
18 proposed use of any funds provided and agreeing that any funds
19 awarded shall be used solely for investigating and prosecuting
20 those cases of workers' compensation fraud or claims relating to
21 the willful failure to secure the payment of workers'
22 compensation that are redirected pursuant to this subdivision.
23 The Attorney General shall submit an annual report to the
24 commissioner with respect to the success of the fraud prosecution
25 efforts of his or her office.

26 (3) Neither the Attorney General nor any district attorney shall
27 be required to relinquish control of any investigation or
28 prosecution undertaken pursuant to this subdivision unless the
29 commissioner determines that satisfactory progress is no longer
30 being made on the case or the case has been abandoned.

31 (4) A county that has become a nonparticipating county due to
32 the inability or unwillingness of its district attorney to investigate
33 and prosecute workers' compensation fraud or the willful failure
34 to secure the payment of workers' compensation shall not
35 become eligible to receive funding under this section until it has
36 submitted a new application that meets the requirements of
37 subdivision (d) and the applicable regulations.

38 (f) If in any fiscal year the ~~Bureau of Fraudulent Claims~~ *Fraud*
39 *Division* does not use all of the funds made available to it under
40 subdivision (d), any remaining funds may be distributed to

1 district attorneys pursuant to a determination by the
2 commissioner in accordance with the same procedures set forth
3 in subdivision (d).

4 (g) The commissioner shall adopt rules and regulations to
5 implement this section in accordance with the rulemaking
6 provisions of the Administrative Procedure Act (Chapter 3.5
7 (commencing with Section 11340) of Part 1 of Division 3 of Title
8 2 of the Government Code). Included in the rules and regulations
9 shall be the criteria for redistributing funds to district attorneys
10 and the Attorney General. The adoption of the rules and
11 regulations shall be deemed to be an emergency and necessary
12 for the immediate preservation of the public peace, health, and
13 safety, or general welfare.

14 (h) The department shall report on an annual basis to the
15 Legislature and the Fraud Assessment Commission on the
16 activities of the ~~Bureau of Fraudulent Claims~~ *Fraud Division* and
17 district attorneys supported by the funds provided by this section.

18 The annual report shall include, but is not limited to, all of the
19 following information for the department and each district
20 attorney's office:

- 21 (1) All allocations, distributions, and expenditures of funds.
- 22 (2) The number of search warrants issued.
- 23 (3) The number of arrests and prosecutions, and the aggregate
24 number of parties involved in each.
- 25 (4) The number of convictions and the names of all convicted
26 fraud perpetrators.
- 27 (5) The estimated value of all assets frozen, penalties assessed,
28 and restitutions made for each conviction.
- 29 (6) Any additional items necessary to fully inform the Fraud
30 Assessment Commission and the Legislature of the
31 fraud-fighting efforts financed through this section.

32 (i) In order to meet the requirements of subdivision (g), the
33 department shall submit a biannual information request to those
34 district attorneys who have applied for and received funding
35 through the annual assessment process under this section.

36 (j) Assessments levied or collected to fight workers'
37 compensation fraud and insurance fraud are not taxes. Those
38 funds are entrusted to the state to fight fraud and the willful
39 failure to secure the payment of workers' compensation by
40 funding state and local investigation and prosecution efforts.

1 Accordingly, any funds resulting from assessments, fees,
2 penalties, fines, restitution, or recovery of costs of investigation
3 and prosecution deposited in the Insurance Fund shall not be
4 deemed “unexpended” funds for any purpose and, if remaining in
5 that account at the end of any fiscal year, shall be applied as
6 provided in subdivision (f) and to offset or augment subsequent
7 years’ program funding.

8 (k) The Bureau of State Audits shall evaluate the effectiveness
9 of the efforts of the Fraud Assessment Commission, the ~~Bureau~~
10 ~~of Fraudulent Claims~~ *Fraud Division*, the Department of
11 Insurance, and the Department of Industrial Relations, as well as
12 local law enforcement agencies, including district attorneys, in
13 identifying, investigating, and prosecuting workers’
14 compensation fraud and the willful failure to secure payment of
15 workers’ compensation. The report shall specifically identify
16 areas of deficiencies. Included in this report shall be
17 recommendations on whether the current program provides the
18 appropriate levels of accountability for those responsible for the
19 allocation and expenditure of funds raised from the assessment
20 provided in this section. The Bureau of State Audits shall submit
21 a report to the Chairperson of the Senate Committee on Labor
22 and Industrial Relations and the Chairperson of the Assembly
23 Committee on Insurance on or before May 1, 2004.

24 SEC. 10. Section 1872.85 of the Insurance Code is amended
25 to read:

26 1872.85. (a) Every admitted disability insurer or other entity
27 liable for any loss due to health insurance fraud doing business in
28 this state shall pay an annual fee to be determined by the
29 commissioner, but not to exceed ten cents (\$0.10) annually for
30 each insured under an individual or group insurance policy it
31 issues in this state, in order to fund increased investigation and
32 prosecution of fraudulent disability insurance claims. After
33 incidental expenses, 50 percent of those funds received from the
34 assessment fee per insured shall be distributed to the ~~Bureau of~~
35 ~~Fraudulent Claims~~ *Fraud Division* of the Department of
36 Insurance for enhanced investigative efforts, and 50 percent of
37 the funds shall be distributed to local district attorneys, pursuant
38 to subdivisions (b) and (c), for investigation and prosecution of
39 disability insurance fraud cases. The funds received under this
40 section shall be deposited into the Disability Insurance Fraud

Account, which is hereby created in the Insurance Fund, and shall be expended and distributed, when appropriated by the Legislature, only for enhanced investigation and prosecution of disability insurance fraud.

In the course of its investigation, the ~~Bureau of Fraudulent Claims~~ *Fraud Division* shall aggressively pursue all reported incidents of probable fraud and, in addition, shall forward to the appropriate disciplinary body the names of any individuals licensed under the Business and Professions Code who are convicted of engaging in fraudulent activity along with all relevant supporting evidence.

(b) The commissioner shall distribute funds pursuant to subdivision (a) to district attorneys who are able to show a likely positive outcome that will enhance the prosecution of disability insurance fraud in their jurisdiction based on specific criteria promulgated by the commissioner. A district attorney desiring funds pursuant to subdivision (a) shall submit to the commissioner an application that includes, but is not limited to, all of the following:

(1) The proposed use of the moneys and the anticipated outcome.

(2) A list of all prior cases or projects in the district attorney's jurisdiction that have been funded under the provisions of this section, and a copy of the final accounting for each case or project. If a case or project is ongoing, the most recent accounting shall be provided.

(3) A detailed budget for the moneys, including salaries and general expenses, that specifically identifies the purchase or rental cost of equipment or supplies.

(c) (1) A district attorney who receives moneys pursuant to this section shall submit a final detailed accounting at the conclusion of each case or project funded. For a case or project that continues for longer than six months, an interim accounting shall be submitted every six months, or as otherwise directed by the commissioner.

(2) A district attorney who receives moneys pursuant to this section shall submit a final report to the commissioner, which may be made public, as to the success of each case or project funded by this section. The report shall provide information and statistics on the number of active investigations, arrests,

1 indictments, and convictions associated with a case or project.
2 The applications for moneys, the distribution of moneys, and the
3 annual report required by Section 1872.9 shall be public
4 documents.

5 (3) Notwithstanding any other provision of this section,
6 information submitted to the commissioner pursuant to this
7 section concerning criminal investigations, whether active or
8 inactive, shall be confidential.

9 (4) The commissioner may conduct a fiscal audit of the
10 programs administered under this subdivision. The fiscal audit
11 shall be conducted by an internal audit unit of the department.
12 The cost of fiscal audits shall be paid from the Disability
13 Insurance Fraud Fund, upon appropriation by the Legislature.

14 (5) If the commissioner determines that a district attorney is
15 unable or unwilling to investigate or prosecute a relevant
16 disability insurance fraud case, the commissioner may
17 discontinue distribution of moneys allocated for that matter
18 pursuant to this section, and may redistribute moneys to other
19 eligible district attorneys.

20 (d) Activities of the ~~Bureau of Fraudulent Claims~~ *Fraud*
21 *Division* with regard to investigating and prosecuting fraudulent
22 disability insurance claims pursuant to this section shall be
23 included in the report required by Section 1872.9.

24 (e) This section shall not apply to policies issued by a
25 reciprocal or interinsurance exchange, as defined by Sections
26 1303 and 1350, or coverage provided by or through a motor club,
27 as defined by Section 12142, affiliated with a reciprocal or
28 interinsurance exchange, if the annual premium charged for the
29 coverage or the annual cost to the insurer for providing that
30 coverage does not exceed one dollar (\$1) per insured.

31 SEC. 11. Section 1872.9 of the Insurance Code is amended to
32 read:

33 1872.9. The ~~Bureau of Fraudulent Claims~~ *Fraud Division*
34 shall annually compile and report, as a part of the
35 commissioner's annual report as required by Section 12922, the
36 following information:

37 (a) The number of cases reported to the ~~bureau~~ *division*
38 pursuant to this chapter.

39 (b) The number of cases rejected for which an investigation
40 was not initiated by the ~~bureau~~ *division* due to insufficient

1 evidence to proceed and the number of cases rejected for which
2 an investigation was not initiated by the ~~bureau~~ *division* due to
3 any other reason.

4 (c) The number of cases that were prosecuted in cooperation
5 with licensing agencies governed by the Business and
6 Professions Code.

7 (d) The number and kind of cases prosecuted as a result of
8 moneys received under Section 1872.7.

9 (e) An estimate of the economic value of insurance fraud by
10 type of insurance fraud.

11 (f) Recommendations on ways insurance fraud may be
12 reduced.

13 (g) A summary of the ~~bureau's~~ *division's* activities with
14 respect to pursuing a reduction of fraud with all of the following:

15 (1) Insurance companies.

16 (2) The Department of Motor Vehicles.

17 (3) The Department of the California Highway Patrol.

18 (4) Licensing agencies governed by the Business and
19 Professions Code.

20 (5) The Department of Insurance.

21 (6) Local and state law enforcement agencies.

22 (7) Employers, as defined in Section 3300 of the Labor Code,
23 who are self-insured for workers' compensation and doing
24 business in the state.

25 (h) Basic claims information including trends of payments by
26 type of claim and other claim information that is generally
27 provided in a closed claim study.

28 (i) A summary of the ~~bureau's~~ *division's* activities with
29 respect to the reduction, pursuant to Section ~~1871.4~~ *550.1 of the*
30 *Penal Code*, of fraudulent denials and payments of
31 compensation.

32 (j) The number and types of cases investigated and prosecuted
33 with funds specified in Section 1872.83.

34 SEC. 12. Section 1872.95 of the Insurance Code is amended
35 to read:

36 1872.95. (a) Within existing resources, the Medical Board of
37 California, the Board of Chiropractic Examiners, and the State
38 Bar shall each designate employees to investigate and report on
39 possible fraudulent activities relating to workers' compensation,
40 motor vehicle insurance, or disability insurance by licensees of

1 the board or the bar. Those employees shall actively cooperate
2 with the ~~bureau~~ *Fraud Division* in the investigation of those
3 activities.

4 (b) The Medical Board of California, the Board of
5 Chiropractic Examiners, and the State Bar shall each report
6 annually, on or before March 1, to the committees of the Senate
7 and Assembly having jurisdiction over insurance on their
8 activities established pursuant to subdivision (a) for the previous
9 year. That report shall specify, at a minimum, the number of
10 cases investigated, the number of cases forwarded to the ~~bureau~~
11 *Fraud Division* or other law enforcement agencies, the outcome
12 of all cases listed in the report, and any other relevant
13 information concerning those cases or general activities
14 conducted under subdivision (a) for the previous year. The report
15 shall include information regarding activities conducted in
16 connection with cases of suspected automobile insurance fraud.

17 SEC. 13. Section 1872.96 of the Insurance Code is amended
18 to read:

19 1872.96. The commissioner shall prepare an annual report,
20 which shall be a public record, with respect to the receipts,
21 expenditures, and activities of the ~~Bureau of Fraudulent Claims~~
22 *Fraud Division* for the year just ended. The report shall be
23 submitted to the Governor and to the Legislature, no later than
24 January 31 of the following year. This report shall not contain
25 any individually identifiable information.

26 SEC. 14. Section 1873.4 of the Insurance Code is amended to
27 read:

28 1873.4. Any or all information released or received by an
29 authorized governmental entity pursuant to Section 1873 or
30 1873.1 shall be provided by that agency to the ~~Bureau of~~
31 ~~Fraudulent Claims~~ *Fraud Division* within 10 days of the agency's
32 receipt of the information.

33 SEC. 15. Section 1874.8 of the Insurance Code, as added by
34 Section 7 of Chapter 885 of the Statutes of 1999, is amended to
35 read:

36 1874.8. (a) Each insurer doing business in this state shall pay
37 an annual fee to be determined by the commissioner, but not to
38 exceed fifty cents (\$0.50) annually for each vehicle insured under
39 an insurance policy it issues in this state, in order to fund the
40 Bureau of Fraudulent Claims and an Organized Automobile

1 Fraud Activity Interdiction Program. The commissioner shall
2 award three to 10 grants for a coordinated program targeted at the
3 successful prosecution and elimination of organized automobile
4 fraud activity. The grants may only be awarded to district
5 attorneys.

6 (b) In determining whether to award a district attorney a grant,
7 the commissioner shall consider factors indicating organized
8 automobile fraud activity in the district attorney's county,
9 including, but not limited to, the county's level of general
10 criminal activity, population density, automobile insurance
11 claims frequency, number of suspected fraudulent claims, and
12 prior and current evidence of organized automobile fraud
13 activity. Funding priority shall be given to those grant
14 applications with the potential to have the greatest impact on
15 organized automobile insurance fraud activity.

16 (c) All participants of a grant referred to in subdivision (a)
17 shall coordinate their efforts and work in conjunction with the
18 bureau, other participating agencies, and all interested insurers in
19 this regard. Of the funds collected pursuant to this section, 42.5
20 percent shall be distributed to district attorneys, 42.5 percent
21 shall be distributed to the Bureau of Fraudulent Claims, and 15
22 percent shall be distributed to the Department of the California
23 Highway Patrol. Funds distributed pursuant to this section to the
24 Bureau of Fraudulent Claims and to the Department of the
25 California Highway Patrol shall be used to fund bureau and
26 Department of the California Highway Patrol investigators who
27 shall be assigned to work solely in conjunction with district
28 attorneys who are awarded grants. Each grantee shall be notified
29 by the Bureau of Fraudulent Claims of the investigators assigned
30 to work with the grantee. Nothing shall prohibit the referral of
31 any cases developed by the Bureau of Fraudulent Claims to any
32 appropriate prosecutorial entity.

33 (d) A grant under this section shall be awarded on the basis of
34 a single application for a period of three years and shall be
35 subject where applicable to the requirements of subdivision (b) of
36 Section 1872.8, except for the requirement that grants be
37 awarded according to population. Continued funding of a grant
38 shall be contingent upon a grantee's successful performance as
39 determined by an annual review by the commissioner. Any
40 redirection of grant funds under this section shall be made only

1 for good cause. The Department of the California Highway
2 Patrol shall submit to the commissioner, for informational
3 purposes only, an annual report on its expenditure of funds under
4 this section in the same format as is required of grantees under
5 this section.

6 (e) There shall be no prohibition against a joint application by
7 two or more district attorneys for a grant award under this
8 section.

9 (f) The bureau shall report, on or before January 1, 2005, to
10 the committees of the Senate and Assembly having jurisdiction
11 over insurance on the results of the grant program established by
12 this section, including funding distributed to the Department of
13 the California Highway Patrol.

14 (g) For purposes of this section “organized automobile fraud
15 activity” means two or more persons who conspire, aid and abet,
16 or in any other manner act together, to engage in economic
17 automobile theft as defined in subdivision (f) of Section 1872.8,
18 or to violate any of the following provisions in relation to an
19 automobile insurance claim:

20 (1) Section 650 or 6152 of the Business and Professions Code.

21 (2) Section 750 of the Insurance Code.

22 (3) Section 549, 550, or 551 of the Penal Code.

23 ~~(h) This section shall remain in effect only until January 1,~~
24 ~~2007, and as of that date is repealed, unless a later enacted~~
25 ~~statute, that is enacted before January 1, 2007, deletes or extends~~
26 ~~that date.~~

27 SEC. 16. Section 1875.20 of the Insurance Code is amended
28 to read:

29 1875.20. Every insurer admitted to do business in this state,
30 *except those otherwise exempted in this code*, shall ~~maintain~~
31 *provide for the continuous operation of* a unit or division to
32 investigate possible fraudulent claims by insureds or by persons
33 making claims for services or repairs against policies held by
34 insureds, *or any other form of insurance fraud.*

35 SEC. 17. Section 1877.3 of the Insurance Code is amended to
36 read:

37 1877.3. (a) Upon written request to an insurer or a licensed
38 rating organization by an authorized governmental agency, an
39 insurer, an agent authorized by that insurer, or a licensed rating
40 organization to act on behalf of the insurer, shall release to the

requesting authorized governmental agency any or all relevant information deemed important to the authorized governmental agency that the insurer or licensed rating organization may possess relating to any specific workers' compensation insurance fraud investigation.

(b) (1) When an insurer or licensed rating organization knows or reasonably believes it knows the identity of a person or entity whom it has reason to believe committed a fraudulent act relating to a workers' compensation insurance claim or a workers' compensation insurance policy, including any policy application, or has knowledge of such a fraudulent act that is reasonably believed not to have been reported to an authorized governmental agency, then, for the purpose of notification and investigation, the insurer, or agent authorized by an insurer to act on its behalf, or licensed rating organization shall notify the local district attorney's office and the ~~Bureau of Fraudulent Claims~~ *Fraud Division* of the Department of Insurance, and may notify any other authorized governmental agency of that suspected fraud and provide any additional information in accordance with subdivision (a). The insurer or licensed rating organization shall state in its notice the basis of the suspected fraud.

(2) Insurers shall use a form prescribed by the department for the purposes of reporting suspected fraudulent workers' compensation acts pursuant to this subdivision.

(3) Nothing in this subdivision shall abrogate or impair the rights or powers created under subdivision (a).

(c) The authorized governmental agency provided with information pursuant to subdivision (a), (b), or (e) may release or provide that information in a confidential manner to any other authorized governmental agency for purposes of investigation, prosecution, or prevention of insurance fraud or workers' compensation fraud.

(d) An insurer or licensed rating organization providing information to an authorized governmental agency pursuant to this section shall provide the information within a reasonable time, but not exceeding ~~30~~ 60 days from the day on which the duty arose.

(e) Upon written request by an authorized governmental agency, as specified in subdivision (o) of Section 1095 of the Unemployment Insurance Code, the Employment Development

1 Department shall release to the requesting agency any or all
2 relevant information that the Employment Development
3 Department may possess relating to any specific workers'
4 compensation insurance fraud investigation. Relevant
5 information may include, but is not limited to, all of the
6 following:

7 (1) Copies of unemployment and disability insurance
8 application and claim forms and copies of any supporting
9 medical records, documentation, and records pertaining thereto.

10 (2) Copies of returns filed by an employer pursuant to Section
11 1088 of the Unemployment Insurance Code and copies of
12 supporting documentation.

13 (3) Copies of benefit payment checks issued to claimants.

14 (4) Copies of any documentation that specifically identifies the
15 claimant by social security number, residence address, or
16 telephone number.

17 SEC. 18. Section 1879.4 of the Insurance Code is amended to
18 read:

19 1879.4. (a) The Chief of the ~~Bureau of Fraudulent Claims~~
20 *Fraud Division* and those investigators designated by him or her
21 may expend funds to conduct undercover activities, employ
22 civilian operatives, or in any other manner not prohibited by law
23 to investigate insurance fraud or workers' compensation fraud.

24 (b) The money expended pursuant to subdivision (a) shall be
25 paid out of the funds appropriated or made available by law for
26 the support or use of the department.

27 SEC. 19. Section 11760 of the Insurance Code is repealed.

28 ~~11760. (a) It is unlawful to make or cause to be made any~~
29 ~~knowingly false or fraudulent statement, whether made orally or~~
30 ~~in writing, of any fact material to the determination of the~~
31 ~~premium, rate, or cost of any policy of workers' compensation~~
32 ~~insurance, for the purpose of reducing the premium, rate, or cost~~
33 ~~of the insurance. Any person convicted of violating this~~
34 ~~subdivision shall be punished by imprisonment in the county jail~~
35 ~~for one year, or in the state prison for two, three, or five years, or~~
36 ~~by a fine not exceeding fifty thousand dollars (\$50,000), or~~
37 ~~double the value of the fraud, whichever is greater, or by both~~
38 ~~imprisonment and fine.~~

39 ~~(b) Any person who violates subdivision (a) and who has a~~
40 ~~prior felony conviction of the offense set forth in that subdivision~~

1 shall receive a two-year enhancement for each prior conviction in
2 addition to the sentence provided in subdivision (a). The
3 existence of any fact that would subject a person to a penalty
4 enhancement shall be alleged in the information or indictment
5 and either admitted by the defendant in open court, or found to be
6 true by the jury trying the issue of guilt or by the court where
7 guilt is established by plea of guilty or nolo contendere or by trial
8 by the court sitting without a jury.

9 SEC. 20. Section 11880 of the Insurance Code is repealed.

10 11880. (a) It is unlawful to make or cause to be made any
11 knowingly false or fraudulent statement, whether made orally or
12 in writing, of any fact material to the determination of the
13 premium, rate, or cost of any policy of workers' compensation
14 insurance issued or administered by the State Compensation
15 Insurance Fund for the purpose of reducing the premium, rate, or
16 cost of the insurance. Any person convicted of violating this
17 subdivision shall be punished by imprisonment in the county jail
18 for one year, or in the state prison for two, three, or five years, or
19 by a fine not exceeding fifty thousand dollars (\$50,000), or
20 double the value of the fraud, whichever is greater, or by both
21 imprisonment and fine.

22 (b) Any person who violates subdivision (a) and who has a
23 prior felony conviction of the offense set forth in that subdivision
24 shall receive a two-year enhancement for each prior conviction in
25 addition to the sentence provided in subdivision (a). The
26 existence of any fact that would subject a person to a penalty
27 enhancement shall be alleged in the information or indictment
28 and either admitted by the defendant in open court, or found to be
29 true by the jury trying the issue of guilt or by the court where
30 guilt is established by plea of guilty or nolo contendere or by trial
31 by the court sitting without a jury.

32 SEC. 21. Section 12964 of the Insurance Code is amended to
33 read:

34 12964. The ~~Bureau of Fraudulent Claims~~ *Fraud Division* shall
35 annually compile and report, as a part of the commissioner's
36 annual report required by Section 12960, the following
37 information:

38 (a) The number of cases reported to the ~~bureau~~ *division*
39 pursuant to Article 6 (commencing with Section 13000).

(b) The number of cases rejected wherein an investigation was not initiated by the ~~bureau~~ *division* due to insufficient evidence to proceed and the number of cases rejected wherein an investigation was not initiated by the ~~bureau~~ *division* due to any other reason.

SEC. 22. Section 138.7 of the Labor Code is amended to read:

138.7. (a) Except as expressly permitted in subdivision (b), a person or public or private entity not a party to a claim for workers' compensation benefits may not obtain individually identifiable information obtained or maintained by the division on that claim. For purposes of this section, "individually identifiable information" means any data concerning an injury or claim that is linked to a uniquely identifiable employee, employer, claims administrator, or any other person or entity.

(b) (1) The administrative director, or a statistical agent designated by the administrative director, may use individually identifiable information for purposes of creating and maintaining the workers' compensation information system as specified in Section 138.6.

(2) The State Department of Health Services may use individually identifiable information for purposes of establishing and maintaining a program on occupational health and occupational disease prevention as specified in Section 105175 of the Health and Safety Code.

(3) *The Fraud Division of the Department of Insurance may use individually identifiable information for purposes of carrying out its duties, including pursuit of incidents of probable workers' compensation fraud.*

(4) (A) Individually identifiable information may be used by the Division of Workers' Compensation, the Division of Occupational Safety and Health, and the Division of Labor Statistics and Research as necessary to carry out their duties. The administrative director shall adopt regulations governing the access to the information described in this subdivision by these divisions. Any regulations adopted pursuant to this subdivision shall set forth the specific uses for which this information may be obtained.

(B) Individually identifiable information maintained in the workers' compensation information system and the Division of Workers' Compensation may be used by researchers employed

1 by or under contract to the Commission on Health and Safety and
2 Workers' Compensation as necessary to carry out the
3 commission's research. The administrative director shall adopt
4 regulations governing the access to the information described in
5 this subdivision by commission researchers. These regulations
6 shall set forth the specific uses for which this information may be
7 obtained and include provisions guaranteeing the confidentiality
8 of individually identifiable information. Individually identifiable
9 information obtained under this subdivision shall not be
10 disclosed to commission members. No individually identifiable
11 information obtained by researchers under contract to the
12 commission pursuant to this subparagraph may be disclosed to
13 any other person or entity, public or private, for a use other than
14 that research project for which the information was obtained.
15 Within a reasonable period of time after the research for which
16 the information was obtained has been completed, the data
17 collected shall be modified in a manner so that the subjects
18 cannot be identified, directly or through identifiers linked to the
19 subjects.

20 ~~(4)~~

21 (5) The administrative director shall adopt regulations
22 allowing reasonable access to individually identifiable
23 information by other persons or public or private entities for the
24 purpose of bona fide statistical research. This research shall not
25 divulge individually identifiable information concerning a
26 particular employee, employer, claims administrator, or any other
27 person or entity. The regulations adopted pursuant to this
28 paragraph shall include provisions guaranteeing the
29 confidentiality of individually identifiable information. Within a
30 reasonable period of time after the research for which the
31 information was obtained has been completed, the data collected
32 shall be modified in a manner so that the subjects cannot be
33 identified, directly or through identifiers linked to the subjects.

34 ~~(5)~~

35 (6) This section shall not operate to exempt from disclosure
36 any information that is considered to be a public record pursuant
37 to the California Public Records Act (Chapter 3.5 (commencing
38 with Section 6250) of Division 7 of Title 1 of the Government
39 Code) contained in an individual's file once an application for
40 adjudication has been filed pursuant to Section 5501.5.

1 However, individually identifiable information shall not be
2 provided to any person or public or private entity who is not a
3 party to the claim unless that person identifies himself or herself
4 or that public or private entity identifies itself and states the
5 reason for making the request. The administrative director may
6 require the person or public or private entity making the request
7 to produce information to verify that the name and address of the
8 requester is valid and correct. If the purpose of the request is
9 related to preemployment screening, the administrative director
10 shall notify the person about whom the information is requested
11 that the information was provided and shall include the following
12 in 12-point type:

13 “IT MAY BE A VIOLATION OF FEDERAL AND STATE
14 LAW TO DISCRIMINATE AGAINST A JOB APPLICANT
15 BECAUSE THE APPLICANT HAS FILED A CLAIM FOR
16 WORKERS’ COMPENSATION BENEFITS.”

17 Any residence address is confidential and shall not be disclosed
18 to any person or public or private entity except to a party to the
19 claim, a law enforcement agency, an office of a district attorney,
20 any person for a journalistic purpose, or other governmental
21 agency.

22 Nothing in this paragraph shall be construed to prohibit the use
23 of individually identifiable information for purposes of
24 identifying bona fide lien claimants.

25 (c) Except as provided in subdivision (b), individually
26 identifiable information obtained by the division is privileged
27 and is not subject to subpoena in a civil proceeding unless, after
28 reasonable notice to the division and a hearing, a court
29 determines that the public interest and the intent of this section
30 will not be jeopardized by disclosure of the information. This
31 section shall not operate to restrict access to information by any
32 law enforcement agency or district attorney’s office or to limit
33 admissibility of that information in a criminal proceeding.

34 (d) It shall be unlawful for any person who has received
35 individually identifiable information from the division pursuant
36 to this section to provide that information to any person who is
37 not entitled to it under this section.

38 SEC. 23. Section 550.1 is added to the Penal Code, to read:

39 550.1. (a) It is unlawful to do any of the following:

1 (1) Make or cause to be made a knowingly false or fraudulent
2 material statement or material representation for the purpose of
3 obtaining or denying any compensation, as defined in Section
4 3207 of the Labor Code.

5 (2) Present or cause to be presented a knowingly false or
6 fraudulent written or oral material statement in support of, or in
7 opposition to, a claim for compensation for the purpose of
8 obtaining or denying any compensation, as defined in Section
9 3207 of the Labor Code.

10 (3) Knowingly assist, abet, conspire with, or solicit a person in
11 an unlawful act under this section.

12 (4) Make or cause to be made a knowingly false or fraudulent
13 statement with regard to entitlement to benefits with the intent to
14 discourage an injured worker from claiming benefits or pursuing
15 a claim.

16 For the purposes of this subdivision, “statement” includes, but
17 is not limited to, a notice, proof of injury, bill for services,
18 payment for services, hospital or doctor records, X-ray, test
19 results, medical-legal expense as defined in Section 4620 of the
20 Labor Code, other evidence of loss, injury, or expense, or
21 payment.

22 (5) Make or cause to be made a knowingly false or fraudulent
23 material statement or material representation for the purpose of
24 obtaining or denying any of the benefits or reimbursement
25 provided in the Return-to-Work Program established under
26 Section 139.48 of the Labor Code.

27 (6) Make or cause to be made a knowingly false or fraudulent
28 material statement or material representation for the purpose of
29 discouraging an employer from claiming any of the benefits or
30 reimbursement provided in the Return-to-Work Program
31 established under Section 139.48 of the Labor Code.

32 (b) Every person who violates subdivision (a) shall be
33 punished by imprisonment in the county jail for one year, or in
34 the state prison, for two, three, or five years, or by a fine not
35 exceeding one hundred fifty thousand dollars (\$150,000) or
36 double the value of the fraud, whichever is greater, or by both
37 that imprisonment and fine. Restitution shall be ordered,
38 including restitution for any medical evaluation or treatment
39 services obtained or provided. The court shall determine the
40 amount of restitution and the person or persons to whom the

1 restitution shall be paid. A person convicted under this section
2 may be charged the costs of investigation at the discretion of the
3 court.

4 (c) A person who violates subdivision (a) and who has a prior
5 felony conviction of that subdivision, of former Section 556 or
6 former Section 1871.1 of the Insurance Code, or of Section 548
7 or 550 of this code, shall receive a two-year enhancement for
8 each prior conviction in addition to the sentence provided in
9 subdivision (b).

10 The existence of any fact that would subject a person to a
11 penalty enhancement shall be alleged in the information or
12 indictment and either admitted by the defendant in open court, or
13 found to be true by the jury trying the issue of guilt or by the
14 court where guilt is established by plea of guilty or nolo
15 contendere or by trial by the court sitting without a jury.

16 (d) This section may not be construed to preclude the
17 applicability of any other provision of criminal law that applies
18 or may apply to a transaction.

19 SEC. 24. Section 550.2 is added to the Penal Code, to read:

20 550.2. (a) It is unlawful to make or cause to be made any
21 knowingly false or fraudulent statement, whether made orally or
22 in writing, of any fact material to the determination of the
23 premium, rate, or cost of any policy of workers' compensation
24 insurance, for the purpose of reducing the premium, rate, or cost
25 of the insurance. Any person convicted of violating this
26 subdivision shall be punished by imprisonment in the county jail
27 for one year, or in the state prison for two, three, or five years, or
28 by a fine not exceeding fifty thousand dollars (\$50,000), or
29 double the value of the fraud, whichever is greater, or by both
30 imprisonment and fine.

31 (b) Any person who violates subdivision (a) and who has a
32 prior felony conviction of the offense set forth in that subdivision
33 or of former Section 11760 of the Insurance Code, shall receive a
34 two-year enhancement for each prior conviction in addition to the
35 sentence provided in subdivision (a). The existence of any fact
36 that would subject a person to a penalty enhancement shall be
37 alleged in the information or indictment and either admitted by
38 the defendant in open court, or found to be true by the jury trying
39 the issue of guilt or by the court where guilt is established by plea

1 of guilty or nolo contendere or by trial by the court sitting
2 without a jury.

3 SEC. 25. Section 550.3 is added to the Penal Code, to read:

4 550.3. (a) It is unlawful to make or cause to be made any
5 knowingly false or fraudulent statement, whether made orally or
6 in writing, of any fact material to the determination of the
7 premium, rate, or cost of any policy of workers' compensation
8 insurance issued or administered by the State Compensation
9 Insurance Fund for the purpose of reducing the premium, rate, or
10 cost of the insurance. Any person convicted of violating this
11 subdivision shall be punished by imprisonment in the county jail
12 for one year, or in the state prison for two, three, or five years, or
13 by a fine not exceeding fifty thousand dollars (\$50,000), or
14 double the value of the fraud, whichever is greater, or by both
15 imprisonment and fine.

16 (b) Any person who violates subdivision (a) and who has a
17 prior felony conviction of the offense set forth in that
18 subdivision, or of former Section 11880 of the Insurance Code,
19 shall receive a two-year enhancement for each prior conviction in
20 addition to the sentence provided in subdivision (a). The
21 existence of any fact that would subject a person to a penalty
22 enhancement shall be alleged in the information or indictment
23 and either admitted by the defendant in open court, or found to be
24 true by the jury trying the issue of guilt or by the court where
25 guilt is established by plea of guilty or nolo contendere or by trial
26 by the court sitting without a jury.

27 SEC. 26. Section 633.3 is added to the Penal Code, to read:

28 633.3. (a) Subject to the policy required in subdivision (c), a
29 peace officer who is an investigator within the Fraud Division of
30 the Department of Insurance, when acting within the course and
31 scope of his or her employment and when conducting a criminal
32 investigation, may listen to, monitor, or record any
33 communication otherwise prohibited from being listened to,
34 monitored, or recorded pursuant to Sections 631, 632, 632.5,
35 632.6, or 632.7.

36 (b) Evidence obtained by an investigator specified in
37 subdivision (a) is admissible.

38 (c) (1) No investigator may listen to, monitor, or record any
39 communication as specified in subdivision (a) until the
40 Department of Insurance establishes a written policy that governs

- 1 the procedures to be used in the gathering of evidence under this
- 2 section and that addresses any notification procedures required
- 3 with respect to the monitoring or recording of conversations.
- 4 (2) The Department of Insurance shall submit that policy to
- 5 the Attorney General.

O